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April 8, 2002

**FOR SETTLEMENT PURPOSES ONLY**

Douglas Fischer  
Assistant Regional Counsel  
New York/Caribbean Superfund Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007-1866

Re: Special Notice Pursuant to Section 122(e) of CERCLA and Demand for  
Past Costs Pursuant to Section 107(a) of CERCLA for the Hudson River  
PCBs Superfund Site

Dear Mr. Fischer:

I am writing on behalf of General Electric Company ("GE") in response to the February 4, 2002 "Special Notice" letter from Richard Caspe to GE regarding the Hudson River PCBs Superfund Site ("Site"). That letter solicited a good faith offer from GE to finance or perform the remedial design and remedial action ("RD/RA") for the Site consistent with the February 2002 Record of Decision ("ROD"). The letter also asked GE to reimburse the United States approximately \$37 million in past response costs. As requested, I am addressing this letter to you but am also providing copies to Regional Administrator Kenny and others who will be evaluating this offer.

In response to the "Special Notice" letter and without waiving any rights or defenses GE may have, inter alia, with respect to EPA's remedy selection or other matters, the company presents the following good faith offer, which reflects the March 20, 2002 discussions between EPA and GE.

1.) Except with regard to the governmental functions described below, GE will perform all aspects of the remedial design consistent with the ROD, including but not limited to:

- Pre-design characterization activities, including sediment inventory sampling, debris survey, sub-bottom characterization, geotechnical characterization of the sediment, habitat delineation and assessment, treatability studies, baseline monitoring activities, and modeling activities.

- Engineering design activities, including design of dredging, dewatering and water treatment equipment, materials handling, engineering controls, restoration, transport and disposal activities.

GE will not perform three aspects of the remedial design: (1) siting the treatment/transfer facilities, including obtaining access to and acquiring the property on which the facilities will be located; (2) establishing the performance standards required under the ROD and conducting the public process leading to establishment of the performance standards; and (3) public outreach and participation. EPA and GE agree that these activities are governmental functions that the Agency will carry out.

In the agreement to do design, GE and EPA will establish a process for reimbursing EPA's reasonable and necessary costs of overseeing GE's remedial design work and performing the government functions described above,

EPA has stated that it will begin an intensive program of sediment sampling this summer to determine the location of PCBs that will be targeted for dredging. We understand this program to entail taking more than 25,000 samples starting this construction season to enable design to proceed in a timely way. To further demonstrate our good faith, GE will begin this time critical work immediately under a separate agreement while the remainder of the design work is negotiated.

2.) As EPA acknowledges, many of the particulars regarding the implementation, scope and cost of the remedial action have been deferred to the completion of the design phase. For instance, the performance standards have not been established; the scope of Phase 1 is still uncertain; and the amount of sediment removal in Section 3 of the Upper Hudson that the Agency wishes to achieve is not known and will not be known for some time. Consequently, GE is unable to determine with sufficient particularity what financing or performing the remedial action would involve. In practical terms, without critical description of the actual remedial activities, it is not possible to achieve an immediate resolution of these issues. Nevertheless, there is ample time to complete the remedial action negotiations while design is ongoing. This approach is consistent with EPA guidance and practice since it avoids delay and will enhance the prospects of reaching an agreement on remedial implementation.

Accordingly, GE proposes to enter into good faith negotiations regarding the implementation and/or financing of the remedial action while the design work is underway. More specifically, GE is willing to negotiate a consent decree under which GE would agree to implement or finance (1) Phase 1 of the remedial action if it is selected and evaluated consistently with the Administrator's statements (e.g., Press Release of Dec. 4, 2001), the requirements of the ROD and meaningful and enforceable performance standards; and (2) Phase 2 of the remedial action if, after evaluating the performance of Phase 1 against the performance standards, there is a reasonable basis to conclude that the benefits to the protection of human health and the environment from proceeding with Phase 2 outweigh the adverse impacts of going forward.

In short, GE commits to making a good faith effort to complete negotiations on implementing or financing Phase 1 of the remedial action during the design period so as to ensure that there will be no delay in implementing this aspect of the work.

3.) GE's offer with respect to the RD/RA is made in reliance on the Administrator's and the ROD's statements concerning performance standards and Phase 1. Specifically, the Administrator's December 4, 2001 Press Release and attached Fact Sheet stated that:

- “[P]erformance standards, which will include resuspension and production rates during dredging, will be developed in a transparent process with public input.. These enforceable performance standards, which will be based on objective environmental and scientific criteria, will promote accountability and ensure the cleanup meets the human and environmental protection objectives of the ROD.” 12/04/01 Press Release.
- “Before these performance standards are finalized, EPA will ask an independent scientific peer review panel to evaluate them.” 12/04/01 Press Release.
- “At the end of the first phase, EPA Region 2 will prepare a report on its operations based on the available data and the performance standards. This report will also be made available to the public and submitted for independent peer review. In its phase 1 report and throughout the project as appropriate, EPA will recommend any needed adjustments in the plan, or determine if modifications are necessary.” 12/04/01 Fact Sheet.

We understand this to mean:

1. The standards will include resuspension and production rates during dredging.
2. The standards will be developed in a transparent process with public input
3. The standards will be enforceable and based on objective environmental and scientific criteria.
4. The standards will promote accountability and ensure that the clean up meets the human health and environmental protection objectives of the ROD.
5. The establishment of performance standards, as well as the report evaluating the first phase of the clean up against the standards, will be subject to independent, external, scientific peer review.
6. The data gathered during Phase 1, as well as the ongoing evaluation of the work with respect to the performance standards. will be made available to the public in a timely manner.
7. The data gathered during Phase 1 will be used to evaluate the project to determine whether it is achieving its intended environmental benefits.

8. At the end of Phase 1, a report will be prepared based on the available data and the performance standards.
9. In its Phase 1 report and throughout the project as appropriate, needed adjustments in or modifications to the plan may be recommended. It is understood that the revised action must provide net benefits to the protection of human health and the environment, and any revised standards must ensure that such benefits are achieved.

In making this offer, GE expressly reserves its right to seek contribution and/or indemnity from third parties for costs the company incurs. We also understand from our technical meeting of March 20, 2002 that issues relating to the evaluation of floodplains and the five-year review of the remnant deposit remedy will be dealt with separately, and we therefore do not address them in this good faith offer.

4.) The Special Notice letter also requested certain other information regarding GE's commitment and ability to perform or finance the work. First, it requested a demonstration of GE's capability to carry out the design work, including a description of the process GE intends to use to select the firm that would conduct the work. As you are aware, GE has successfully performed remedial actions at many Superfund sites and has the ability and expertise required to undertake the work called for in the ROD.

More specifically, GE has begun to develop the necessary design and pre-design work plans for the project. As part of our discussions with you on GE's offer, we are prepared to immediately provide a work plan for the sediment characterization program and reach an agreement to implement this sampling work separate from the agreement for the remainder of the design work. This plan is being developed by Quantitative Environmental Analysis, LLC, with the assistance of Blasland, Bouck & Lee, Inc. It is our expectation that performance of the sediment sampling program would be overseen by these two firms, both of whom have substantial experience in sediment sampling and characterization activities. While we have not yet selected the firms that will conduct the remainder of the design work, including the project's supervising contractor, we have completed a pre-screening of qualified firms. We expect to make a final decision and submit the firms' qualifications by May 1, 2002. We intend to select the firms using the following criteria:

1. Demonstrated design and implementation experience in sediment remediation projects and sediment, water quality, and ecological data collection and monitoring;
2. Demonstrated experience working in New York State;
3. Expertise in related disciplines (cultural resources, habitat restoration, etc.);
4. Sufficient staffing capacity to complete the design within the specified time frame; and
5. Qualifications of the key project personnel.

Using these criteria, we intend to select a short list of qualified firms. We envision a fast-tracked contractor selection process where the short-listed firms would submit cost proposals presenting their approach to the design process. Because work plan preparation is already in process, this contractor selection process should not affect EPA's schedule as set out in the ROD.

Second, the letter requested that GE demonstrate its willingness and ability to finance the RD/RA. GE's willingness to finance this work is demonstrated by the offer set out above. Its financial ability to pay for this work is demonstrated by the company's sound financial condition, as evidenced by the enclosed annual report.

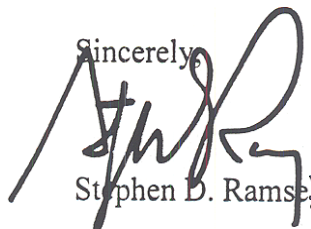
Third, the letter asks that GE identify the name, address, and telephone number of the individual(s) who will represent the company in negotiations. I, or my designee, will represent the company in these negotiations. As needed, I will be assisted by counsel and individuals with appropriate technical expertise,

I also want to reiterate GE's commitment to complete the source control work at Hudson Falls consistent with the proposal the company has submitted to NYSDEC. This work is critical to the effectiveness of any remedial action for the River and is necessary to the success of the remedial action selected in the ROD.

Finally, although not required by section 122(e), GE will enter into negotiations to resolve the government's claim for past response costs following the resolution of the other issues raised in the Special Notice letter and addressed in this response. As you know, we have requested and are awaiting back-up documentation supporting the government's claim. You have provided a portion of the requested materials.

As indicated herein, this good faith offer is submitted for purposes of negotiation and settlement only and nothing herein constitutes, or should be construed as, any admission of law, fact, or liability. In accordance with Rule 408 of the Federal Rules of Evidence, neither the submission of this letter nor any statement herein shall be admissible in any judicial proceeding.

GE believes that the foregoing proposal constitutes a good faith offer in response to EPA's Special Notice letter. As requested by EPA and in accordance with CERCLA § 122(e), the offer provides a commitment by GE to perform or finance (subject to final negotiations) the RD/RA consistent with the ROD and demonstrates GE's willingness and ability to perform and/or finance the work. We look forward to meeting with the Agency immediately to begin negotiations in order to achieve an expeditious settlement agreement along the lines discussed above.

Sincerely,  
  
Stephen D. Ramsey

enc.

Douglas Fischer

April 8, 2002

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cc: Jane M. Kenny, Regional Administrator, U.S. EPA Region 2  
Marianne Horinko, Assistant Administrator, OSWER, U.S. EPA  
Walter Mugdan, Regional Counsel, U.S. EPA Region 2  
Richard Caspe, Director, Superfund Program, U.S. EPA Region 2  
Allison Hess, Project Manager, U.S. EPA Region 2  
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